Dr Leela Ratos & Ors v Anthony Ratos s/o Domingos Ratos & Ors

HIGH COURT (KUALA LUMPUR) — PETITION NO D5-26-5-1996
KAMALANATHAN RATNAM JC
8 AUGUST 1996

Civil Procedure *— Pleadings — Striking out — Application to strike out pleadings in petition (part of) — Rules of the High Court 1980 O 18 r 19*

Companies and Corporations *— Members' right — Oppression — Petition for relief from oppression — Averments of outrageous conduct — Whether sufficient grounds to present a petition under s 181 of the Companies Act 1965 — Whether scandalous — Whether ought to be struck out — Companies Act 1965 s 181 — Rules of the High Court 1980 O 18 r 19*

Civil Procedure *— Pleadings — Striking out pleadings in petition — Failure to specify with clarity in the application the exact paragraph to be struck out — Whether respondent permitted to refer to affidavit in which he specifically referred to prayers in the petition to be struck out — Rules of the High Court 1980 O 18 r 19*

The first petitioner was the wife of the first respondent. The second to the sixth petitioners were their children. They were shareholders and directors of various family companies. Due to certain disputes, the petitioners filed a petition under s 181 of the Companies Act 1965 ('the Act'). After being served with the petition, the first respondent took out a summons in chambers pursuant to O 18 r 19 of the Rules of the High Court 1980 ('RHC'), inter alia, to strike out the pleadings in the petition, in particular sub-paras 17.11 and 17.31. The allegations in sub-para 17.11 were that the first respondent threatened a car park attendant with a gun, took control of the car park and the collections belonging to the company, and refused to account for the money to the prejudice of the shareholders. The allegation in sub-para 17.31 was that the first respondent threatened to blow up the fourth respondent company's premises. The first respondent relied on O 18 r 19(1)(b) and (c), and averred that: (i) allegations about a person's character were not relevant in a petition under s 181; and (ii) the allegations as stated in the paragraphs were intended to give a bad image of him by showing him as being crazy and violent and with an intention of tarnishing his good name. The first respondent also asked the High Court to strike out pleadings in respect of the seventh respondent as it was a duplicity. It was averred that the orders sought were issues in other proceedings, and that the matter before another High Court judge in which the present seventh respondent was the seventh plaintiff had not been resolved. However, with regard to the pleadings relating to the seventh respondent, it was only in the affidavit that the first respondent specifically referred to prayers (k) and (l) in the petition to be struck out.

Held, dismissing the summons:

(1) Sub-paragraphs 17.11 and 17.31 were averments of the conduct of the first respondent who was a shareholder and director of the fourth respondent. If these acts were done, they could be considered as being done with total disregard of the petitioners' interest. Such conduct if done or said was sufficient ground to present a petition under s 181 of the Act (see p 178A–D).

(2) The pertinent question was whether the affairs of the company were conducted or were attributable to an act or omission on the part of the company and not from the acts of a shareholder carried out in personal capacity outside the course of a company business. A course of conduct by a shareholder which was damaging to the company, if called to the company's attention, the company would probably have been able to rectify, was conduct in the affairs of the company and oppressive (see p 178D–F); *Re A Co (No 001761 of 1986)* [1987] BCLC 141 followed.

(3) Allegations of dishonesty and outrageous conduct were not scandalous if relevant to the issue and would be admissible in evidence to show the truth of any allegation that is material to the relief sought (see p 179A–C); *Everett v Prythrgeh* [1841] 12 Sim 363, *Millington v Loring* [1881] 6 QBD 190 and *Christie v Christie* [1872-1873] LR 8 Ch App 499 followed.

(4) If a party wishes the court to strike out or expunge or amend any passage or paragraph in the pleadings before the court, then it is the duty of the party seeking the court's indulgence to so act to place before the court in clear, unambiguous terms the exact requirement, namely whether to strike out or expunge or amend, and to clearly spell out the exact words or passage or lines in the pleadings. Most of the paragraphs in the petition referred to the seventh respondent. Such a wide application was vague and ambiguous, and ought to be struck out for uncertainty and lack of precision (see pp 179E–I); *Williamson v London & North Western Railway Co* [1879-1880] 12 ChD 787 and *Carl Zeiss Stiftung v Rayner & Keeler Ltd & Ors (No 3)* [1979] Ch 506 followed.

(5) However, it was only in the affidavit that the first respondent specifically referred to prayers (k) and (l) in the petition to be struck out. An affidavit is to support the application and not vice versa. The court must not be put in a position to circumspect an application (see p 180B).

[Bahasa Malaysia summary

Pempetisyen pertama adalah isteri penentang pertama. Pempetisyen kedua hingga keenam adalah anak-anak mereka. Kesemua adalah pemegang syer dan pengarah dalam pelbagai syarikat keluarga. Disebabkan oleh pelbagai pertikaian, pempetisyen-pempetisyen

memfailkan satu petisyen di bawah s 181 Akta Syarikat 1965 ('Akta tersebut'), suatu perlindungan statutori terhadap penindasan. Setelah petisyen itu disampaikan, penentang pertama mengeluarkan satu saman dalam kamar menurut A 18 k 19 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), antara lain, untuk membatalkan pliding dalam petisyen itu, khasnya sub-perenggan 17.11 dan 17.31. Pengataan-pengataan dalam sub-perenggan 17.11 adalah bahawa penentang pertama telah mengugut seorang atendan tempat letak kereta dengan sepucuk pistol, dan mengambil alih kawalan tempat letak kereta itu dan pungutannya yang dimiliki oleh syarikat dan enggan menjelaskan wang itu, seterusnya memudaratkan pemegang-pemegang syer. Pengataan dalam sub-perenggan 17.31 adalah bahawa penentang pertama telah mengugut untuk meletupkan premis perniagaan penentang keempat. Penentang pertama bergantung pada A 18 k 19(1)(b) dan (c), dan menegaskan bahawa: (i) pengataan mengenai budi pekerti seseorang tidak relevan dalam petisyen di bawah s 181; dan (ii) pengataan seperti yang dinyatakan dalam perengganperenggan tersebut bertujuan memberi gambaran buruk terhadapnya dengan menyerupakannya sebagai orang tidak siuman dan bertindak ganas, dan bertujuan mencemarkan nama baiknya. Penentang pertama juga meminta Mahkamah Tinggi membatalkan pliding mengenai penentang ketujuh kerana ianya satu kependuaan. Walau bagaimanapun, hanya dalam afidavit penentang pertama merujuk secara khusus kepada permohonan-permohonan (k) dan (l) dalam petisyen supaya dibatalkan. Penentang pertama menegaskan bahawa perintah yang diminta adalah isu dalam prosiding yang lain, dan bahawa perkara yang perlu dipertimbangkan oleh seorang hakim Mahkamah Tinggi yang lain dalam mana penentang ketujuh sekarang adalah plaintif ketujuh belum diselesaikan.

Diputuskan, menolak saman itu:

(1) Sub-perenggan 17.11 dan 17.31 adalah tegasan-tegasan yang membayangkan kelakuan penentang pertama, yang juga merupakan seorang pemegang syer dan pengarah syarikat penentang keempat. Sekiranya perbuatan-perbuatan ini dilakukan, bolehlah dianggap sebagai perbuatan tanpa mengendahkan kepentingan pempetisyen-pempetisyen. Perbuatan sedemikian jika disebut atau dilakukan adalah memadai sebagai alasan untuk mengemukakan satu petisyen di bawah s 181 Akta tersebut (lihat ms 178A–D).

(2) Persoalan yang bersangkut-paut ialah sama ada urusan syarikat itu dikendalikan atau disebabkan oleh satu tindakan atau peninggalan pada pihak syarikat dan bukannya daripada tindakan seseorang pemegang syer yang dilakukan dalam kedudukan peribadinya di luar urusan perniagaan syarikat. Sesuatu siri tindakan, sekiranya dibawa kepada perhatian syarikat, dan syarikat tersebut barangkali akan dapat memperbetulkannya,adalah perbuatan dalam urusan syarikat dan perbuatan menindas (lihat

ms 178D–F); *Re A Company (No 001761 of 1986)* [1987] BCLC 141 diikut. A

(3) Pengataan ketidakjujuran dan kelakuan yang mengejutkan tidak melampau sekiranya ianya relevan kepada isu dan keterangannya boleh diterima untuk menunjukkan kebenaran sebarang pengataan yang material terhadap relief yang diminta (lihat ms 179A–C); *Everett v Prythrgeh* [1841] 12 Sim 363, *Millington v Loring* [1881] 6 QBD 190 dan *Christie v Christie* [1872-1873] LR 8 Ch App 499 diikut. B

(4) Sekiranya sesuatu pihak menghasratkan mahkamah membatalkan atau memadam atau meminda sebarang petikan atau perenggan dalam pliding di hadapan mahkamah, maka adalah kewajipan pihak tersebut yang meminta turutan kehendak mahkamah berbuat demikian supaya mengemukakan di hadapan mahkamah dalam terma yang tidak meragu-ragukan dan jelas, kehendak sebenarnya, iaitu sama ada untuk membatalkan atau memadam atau meminda, dan menyatakan dengan jelas perkataan atau petikan atau garisan dalam pliding tersebut. Kebanyakan perenggan dalam petisyen itu merujuk kepada penentang ketujuh. Permohonan luas sebegini adalah samar-samar dan taksa, dan patut dibatalkan atas ketidakpastian dan kekurangan ketepatan (lihat ms 179E–I); *Williamson v London & North Western Railway Co* [1879-1880] 12 Ch D 787 dan *Carl Zeiss Stiftung v Rayner & Keeler Ltd & Ors (No 3)* [1979] Ch 506 diikut. C D E

(5) Walau bagaimanapun, hanya dalam afidavitnya penentang pertama merujuk secara khususnya kepada permohonan-permohonan (k) dan (l) dalam petisyen supaya dibatalkan. Suatu afidavit adalah untuk menyokong permohonan dan bukan sebaliknya. Mahkamah semestinya tidak boleh diletakkan dalam keadaan untuk meneliti sesuatu permohonan (lihat ms 180B).] F

Notes

For cases on pleadings, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2506–2772. G

For cases on member's right, see 3 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 188–219.

Cases referred to H

A Company, Re (No 001761 of 1986) [1987] BCLC 141

Bellador Silk Ltd, Re [1965] 1 All ER 667

Buckland v Palmer [1984] 1 WLR 1109

Carl Zeiss Stiftung v Rayner & Keeler Ltd & Ors (No 3) [1970] Ch 506

Christie v Christie (1872–1873) LR 8 Ch App 499 I

Everett v Prythrgeh [1841] 12 Sim 363

Lesco Development Corp Sdn Bhd v Malaysia Building Society Bhd [1988] 2 MLJ 184

Millington v Loring [1881] 6 QBD 190

A *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281
Williamson v London & North Western Railway Co (1879–80) 12 Ch D 787

Legislation referred to

B Companies Act 1965 s 81
Evidence Act 1950 ss 3, 8
Rules of the High Court 1980 O 18 r 19
Companies Act 1948 s 210 [UK]

N Saraswathy Devi and *RS Sodhi* (*N Saraswathy Devi*) for the petitioners.
C *DP Naban* and *KA Gan* (*Azman Davidson & Co*) for the first respondent.
Azlan Suleiman (*Abdullah & Zainuddin*) for the second respondent.

Cur Adv Vult

D **Kamalanathan Ratnam JC** (delivering the judgment of the court): The first petitioner is the wife of the first respondent. The second to the sixth petitioners are their children. They were shareholders and directors of various family companies. Due to various disputes, the petitioners filed this s 181 petition. After being served with the petition, the first respondent took out a summons in chambers (encl 10) pursuant to O 18 r 19 of the
E Rules of the High Court 1980 ('RHC'), inter alia, to strike out the pleadings in the petition, in particular sub-paras 17.11 and 17.31 and also pleadings in respect of the seventh respondent. The grounds in support of encl 10 are that as stated in O 18 r 19(1)(b) and (c).

In his affidavit in support of encl 10, the first respondent averred that
F the allegations as stated in the said paragraphs were intended to give a bad image of him by showing him as being crazy and violent and with an intention of tarnishing his good name. He also averred that allegations about a person's character were not relevant in a petition under s 181 of the Companies Act 1965 ('the Act'). With regard to the pleadings relating
G to the seventh respondent, it was only in the affidavit that he referred to prayers (k) and (l) in the s 181 petition (which would be reproduced later) and averred that the orders sought were issues in other proceedings, that is *Dr Leela Ratos & Ors v Anthony Ratos & Ors (in the matter of Insaf Leela Holdings Sdn Bhd)* Originating Summons No D2–24–312–95 (hereinafter referred to as 'the D2 matter'). It was further averred that the D2 matter
H before another High Court judge in which the present seventh respondent was the seventh plaintiff had not been resolved. Thus, it was claimed by the first respondent that the present petition was one of duplicity and ought to be struck out. The relevant paragraphs in the petition that the first respondent was seeking to strike out are reproduced herewith:

I 17.11 On 4 October 1995, the first respondent came to the fourth respondent's car park with a shotgun and forced the cashier at the car park to leave. A police report was lodged and the police have taken the said shotgun pending inquiry. The first respondent has behaved in a manner which threatens the safety of the petitioners,

the petitioner's family members, the staff of the fourth, fifth, sixth and seventh respondents and the first respondent threatens to continue to do so. The first respondent also continues to make threats of shooting the employees of the fifth respondent company. It is unsafe to allow the first respondent to enter and remain on any of the FGC premises. A copy of the said police report and other related documents are marked as exh LR–12. The first respondent continues to make this unlawful collection and does not account for the same.

17.31 On or about 4 January 1996, the first respondent informed the first petitioner that he had acquired a knife from the orang asli in Jerantut, with which he would kill himself and blame the first petitioner and his eldest son Anthuan Ratos. On or about 12 January 1996, the first respondent threatened to blow up the fourth respondent's business premises and a complaint was made to the police. A copy of the said complaint dated 12 January 1996 is now shown to me and marked LR–24.

Prayers (k) and (l) in relation to the seventh respondent, as stated in the affidavit, are reproduced herewith:

(k) That the board of directors' meeting dated 18 August 1995 and the transfer of any of the 500,000 shares of the seventh respondent company from the third petitioner (250,000 shares), the fourth petitioner (249,999) shares and the first petitioner (one share) to the first respondent be declared null and void.

(l) That the resolution dated 18 August 1995 purporting to authorize the transfer of the 500,000 shares of the seventh respondent as referred to hereinbefore be declared null and void.

The First Respondent's Case

Mr Naban, counsel for the first respondent, began his submissions by stating that encl 10 was not to strike out the entire petition but only certain parts of it. The first part is to strike out paras 17.11 and 17.31 and the second part to strike out the claim relating to the seventh respondent.

It was argued that paras 17.11 and 17.31 ought to be struck out on the basis that they are wholly irrelevant for a petition under s 181 of the Act. A petition under s 181 is only in regard to affairs of the company being conducted or powers of the directors being exercised in a manner oppressive to one or more members of the company or in disregard of the members' interest. It was argued before me that the disregard must be in the capacity as members of the company and not in their personal capacity. It was the contention of the respondent that para 17.31 was an attempt to prejudice the mind of the court. The first respondent referred to *Re A Company (No 001761 of 1986)* [1987] BCLC 141. The facts of the case were as follows:

Two shareholders of a company, who together with the respondent were the only shareholders and directors of the company, presented a cross-petition under s 459 of the Companies Act 1985 alleging that affairs of the company had been conducted in an unfairly prejudicial manner and seeking an order

A that the respondent sell her shares to them. The principal ground of complaint was that the respondent had paid off a loan which the company owed to its bank without informing the company and had taken a transfer of the bank's security. The petition contained a number of other broad allegations of unfairly prejudicial conduct which included, inter alia, allegations that: (i) the respondent had interfered in the day-to-day management of the company; B (ii) an ineffective notice for the repayment of a loan had been served on the company; and (iii) the respondent's personal solicitor had at a board meeting asked the petitioners to transfer their shares to the respondent and to resign as directors. The respondent sought to have the cross-petition struck out on the grounds that it disclosed no cause of action or alternatively that it was an abuse of the process of the court or that it was bound to fail.

C The court, in dismissing the petition, held that to obtain relief under s 459 of the 1985 Act, it was necessary for a petitioner to show that the unfair prejudice arose from the way in which the affairs of the company were conducted or was attributable to an act or omission on the part of the company, and not from the acts of a shareholder carried out in a personal D capacity outside the course of a company's business. The first respondent also referred me to *Re Bellador Silk Ltd* [1965] 1 All ER 667, where at p 672 Plowman J said:

> A petition which is launched not with the genuine object of obtaining the relief claimed, but with the object of exerting pressure in order to achieve a E collateral purpose is, in my judgment, an abuse of the process of the court, and it is primarily on that ground that I would dismiss this petition.

With regard to the second part in encl 10, Mr Naban referred me to encl 15 exh AR 15, which are the cause papers for the D2 matter. In the D2 matter, the plaintiffs — one of whom is the seventh respondent here — F prayed for an order that:

1 An injunction be granted until the final disposal of this originating summons to restrain the first, second, third and fourth defendants whether by themselves, their servants or agents from:

(a) acting or holding themselves out as directors or the company secretary of Insaf Leela Holdings Sdn Bhd; G

(b) interfering with, or disrupting in any manner whatsoever and howsoever, with the operations and business activities of Insaf Leela Holdings Sdn Bhd and/or the City Medical Centre located at No 413-425, Jalan Pudu, Kuala Lumpur and/or the subsidiaries or associated companies of Insaf Leela Holdings Sdn Bhd;

H (c) holding and/or carrying on with the extraordinary general meeting of Insaf Leela Holdings Sdn Bhd on 18 August 1995, or at any other dates;

(d) holding and/or carrying on any meetings of the board of directors of Insaf Leela Holdings Sdn Bhd;

I (e) transferring, selling, charging, dealing or disposing in any manner whatsoever and howsoever any and all shares said to be owned or held by the defendants in Insaf Leela Holdings Sdn Bhd; and

(f) carrying out, implementing and/or effecting in any manner whatsoever and howsoever any and all resolutions whether by

meetings of members of the board of directors in which the defendants were involved in Insaf Leela Holdings Sdn Bhd. A

I was then cross-referred to the present petition para 21(a)(i) which reads as follows:

> 21 Wherefore your humble petitioners pray as follows:
>
> a that an injunction be granted restraining the first respondent by himself, his servants or agents or otherwise howsoever from: B
>
> (i) interfering with the affairs of and entering and remaining on the premises of the fourth respondent at No 415-427 Jalan Pudu, the premises of the fifth, sixth and seventh respondent at No 413 Jalan Pudu, 55100 Kuala Lumpur and from holding himself out as representing the fourth, fifth, sixth and seventh respondent company in any manner whatsoever; and C

It was argued that in substance, the relief claimed was the same. I was then referred to paras (k) and (l) of the present petition referred to earlier. It was submitted that para 1(e) of encl 15 exh AR 15 was identical to para (k) of the petition. It was the submission of the respondent that a litigant should not be faced with duplicity of issues. In support of this argument, the respondent relied on *Buckland v Palmer* [1984] 1 WLR 1109, where at p 1116 Griffiths LJ said: D

> It may therefore seem to be over-technical to refuse to permit them to claim that damage in a separate action. But the rule against multiplicity of proceedings in respect of a single cause of action is soundly based on considerations of public policy designed to prevent the harassment of litigants by exposing them to the anxiety and expense of unnecessary legal proceedings; often in the past expressed in the legal maxims nemo debet bis vexari and interest republicae ut sit finis litium. E F

I was also referred to *Lesco Development Corp Sdn Bhd v Malaysia Building Society Bhd* [1988] 2 MLJ 184, wherein the (then) Supreme Court held that it was undesirable to allow a situation where two different courts would try and determine the same issues arising between the same parties relating to the same subject matter. G

It was forcibly submitted before me that the claim against the seventh respondent and the first respondent in the petition is effectively a duplicity of the claim in the D2 matter filed by the present petitioners before the commencement of this petition, which had not been resolved yet. H

The Petitioners' Case

In reply, Mr Sodhi, counsel for the petitioners, argued that in the present para 17, the petitioners had stated that at all material times, the affairs of the family group of companies were being conducted and the powers of the directors being exercised by the first respondent, his servants and/or his agents in a manner oppressive to the petitioners, unlawfully and in disregard of the interest of the petitioners. The first respondent was a director of the fourth respondent. In support of this argument, Mr Sodhi I

relied on *Re A Company (No 001761 of 1986)* [1987] BCLC 141 at p 144, where Harman J said:

> However, Lord Simonds, Lord Morton and Lord Denning go farther in analysis, particularly Lord Morton ([1958] 3 All ER 66 at p 74, [1959] AC 324 at p 347), where he says: 'I turn now to consider whether there is any other ground on which the present case comes within s 210...' and Lord Denning, where he says that the directors were at most guilty only of inaction, 'but the affairs of a company can, in my opinion, be conducted oppressively by the directors doing nothing to defend its interests when they ought to do something.' (See [1958] 3 All ER 66 at p 88, [1959] AC 324 at p 367). Both those citations show that inaction on the board of a company by persons who knew of the course of conduct by the shareholder which was damaging to the company, which course of conduct, if called to the company's attention, the company would probably have been able to rectify, was conduct in the affairs of the company and oppressive.

Mr Sodhi referred me to encl 18, which was the affidavit of one Shanmugam Ratnam, the car park attendant, who averred that the first respondent did threaten him with a gun and did take control of the car park and a police report to this effect was lodged. This fact had not been denied by the first respondent in his affidavit — that is, encl 20 — although he had specifically mentioned encl 18 in encl 20. There is also another affidavit, encl 17, by one Teh Chow Lai, the personnel manager of the fourth respondent who affirmed that he was present at the car park when the first respondent threatened the car park attendant with a rifle. Even this statement has not been rebutted by the first respondent in encl 20 although he has referred to encl 17. Mr Sodhi referred me to the oft-quoted decision of Gopal Sri Ram JCA in *Ng Hee Thoong & Anor v Public Bank Bhd* [1995] 1 MLJ 281 at p 286, wherein his Lordship said:

> Now, it is a well settled principle governing the evaluation of affidavit evidence that where one party makes a positive assertion upon a material issue, the failure of his opponent to contradict it is usually treated as an admission by him of the fact so asserted

The petitioners referred me to para 17 of the petition, wherein they had stated that the first respondent was exercising the powers of a director when he threatened the car park attendant and took over the collection and refused to account for the money, to the prejudice of the shareholders. With regard to sub-para 17.31 relating to the first respondent's threat of suicide and to blow up the fourth respondent's business premises, this too relates back to the main para 17. It was submitted that the shareholders of the family group of companies are entitled to have their directors carry on their functions without fear of threat as complained of in sub-para 17.31 of the petition, that is, a threat from its own director in the person of the first respondent. It was further pointed out that the impugned paragraphs relate to facts that fall squarely within the principle stated in *Re A Company* in that the prejudice arose from the way in which the affairs of the company were conducted and not from the acts of a shareholder carried out in a personal capacity outside the course of a company's business. The

petitioners also relied on ss 3 and 8 of the Evidence Act 1950 relating to relevancy of facts and in particular to the existence of a fact which is relevant to show motive or preparation on any fact in issue. It was urged upon me, for the purposes of concluding whether there was oppression by the director, that all these unrebutted facts had to be considered.

With regard to the submission relating to the second part of encl 10, the petitioners pointed out that the first respondent had failed to specify with clarity the exact paragraph that the first respondent requires this court to strike out. The prayer in respect of the seventh respondent in encl 10 are that 'the pleadings relating to the seventh respondent be struck out on the ground that ...'.

The petitioners argue that the particular paragraphs that were sought to be struck out ought to have been clearly spelt out. Most of the paragraphs in the petition referred to the seventh respondent and it was hence submitted that the application to strike out was vague and ambiguous and lacked particulars. It was only in its submission that the first respondent referred to the impugned paragraph as being paras (k) and (l). With regard to the submission by the first respondent that the orders sought as against the seventh respondent are also issues in the D2 matter, the petitioners averred that the prayers sought in the D2 matter were different to that sought in this petition. I reproduce herewith the prayers sought in the D2 matter:

1 Bahawa mesyuarat am luar biasa untuk Insaf Leela Holdings Sdn Bhd yang bersidang pada 11 Julai 1995 dan pada tarikh-tarikh lain selepas 11 Julai 1995 dan yang dipanggil oleh defendan-defendan tidak sah dan tidak teratur.

2 Bahawa perkara-perkara dan resolusi-resolusi yang dibincangkan dan diluluskan dalam mesyuarat am luar biasa Insaf Leela Holdings Sdn Bhd dan dalam mesyuarat-mesyuarat lembaga pengarah-pengarah yang dihadiri oleh defendan-defendan tidak sah dan tidak teratur.

3 Bahawa pihak defendan pertama tidak berkuasa untuk menggunakan perkara 72(3) dalam memorandum dan perkara-perkara persatuan untuk membuangkan pengarah-pengarah dan tindakannya tidak sah dan tidak teratur.

4 Bahawa pindahmilik saham-saham kepada defendan pertama tidak sah dan tidak teratur dan tidak mengikut peruntukan memorandum dan perkara-perkara persatuan.

5 Bahawa perlantikan defendan keempat sebagai setiausaha syarikat bagi Insaf Leela Holdings Sdn Bhd tidak sah dan tidak teratur.

6 Bahawa perlantikan dan pengundian defendan-defendan kedua dan ketiga tidak sah dan tidak teratur.

7 Bahawa notis dan kepanggilan untuk mesyuarat am luar biasa untuk diadakan pada 11 Julai 1995 yang dihantarkan oleh defendan pertama tidak sah dan tidak teratur.

8 Bahawa kos prosiding ini ditaksirkan dan dibayar oleh defendan-defendan.

9 Selanjutnya dan lain relief.

In comparison, the prayers sought in the instant petition via prayers (k) and (l) are as follows:

> (k) Bahawa mesyuarat pengarah bertarikh 18 Ogos 1995 dan pemindahan milik 500,000 saham syarikat penentang ketujuh dari benefisiari pempetisyen ketiga Anthea @ Anita Ratos (250,000 saham), benefisiari pempetisyen keempat Ari Arun Ratos (249,999 saham) dan pempetisyen pertama (satu saham) kepada penentang pertama diumumkan sebagai batal dan tidak sah.
>
> (l) Bahawa resolusi pengarah bertarikh 18 Ogos 1995 yang kononnya meluluskan pindahmilik 500,000 saham syarikat penentang ketujuh dari pempetisyen pertama, ketiga dan keempat kepada penentang pertama diumumkan sebagai batal dan tidak sah.

It was pointed out that the prayers sought in the D2 matter were different and not in pari materia to the pleadings in the D5 petition. It was further submitted that if the first respondent was unhappy in any manner whatsoever he could have applied to consolidate both matters. The petitioners pointed out that pursuant to O 18 r 19, the first respondent, in trying to avail himself of the said rule, ought to show a plain and obvious case to strike out, and since there has been no affidavit denying the contents of the petition, clearly there was no evidence in dispute.

In reply, Mr Naban, whilst conceding that a reply to a petition ought to be by an affidavit, submitted that his client's affidavit, encl 15 — even though not a reply to the petition — was a reply to encl 10. He referred me specifically to para 36 of encl 15 wherein the issues of the shotgun and the threat were specifically denied. And in respect of the alleged threat of suicide, the same had been denied in para 53.1 of encl 15.

In reply to the allegation that he had failed to identify clearly the paragraph to be impugned, he was of the view that the prayers in the D2 matter were the same as in encl 10(a). He also denied that this was a proper case for consolidation since the petitioners were the parties who commenced proceedings in both the cases and contended that this was an abuse of the process of the court. The applicant also argued that the petitioners were wrong to rely on what is called a 'family group of companies' because there are various shareholders in some of the companies who are not family members and therefore, it was inaccurate to refer to the companies as a family group of companies (para 3.1 of encl 15). It was also submitted that the term 'family group of companies' had no legal meaning and is not a legal entity.

In reply to Mr Naban's contention that the applicant had given notice of his intention to use the affidavits, Mr Sodhi argued that this meant that they were merely intending to use the affidavits in response to encl 10. They ought to have specifically denied the averments in the petition or given notice that they intended to use the affidavits to deny the contents of the petition. In this case, they had done neither.

(*a*) *Ought the Two Sub-paragraphs to be Struck Out*

Sub-paragraphs 17.11 and 17.31 were averments reflective of the conduct of the first respondent who was a shareholder and director of the fourth respondent. The argument of the first respondent that the said sub-paragraphs are wholly irrelevant for a petition under s 181 of the Act is, at least in the instant case, a totally unacceptable submission. The allegations in sub-paras 17.11 are that the first respondent threatened the car park attendant with a gun and took control of the car park and the collections and refused to account for the money to the prejudice of the shareholders and this statement is supported by an affidavit of that same car park attendant and one other, that is the personnel manager. The allegation in sub-para 17.31 is that the first respondent threatened to blow up the seventh respondent. If these acts are done, then they can be considered as being done with total disregard of the petitioners' interest. As to whether what was said in sub-para 17.11 was indeed done, or that what was said in sub-para 17.31 was indeed said, are matters to be proved at the hearing of the petition. Such conduct if done or said is, in my view, sufficient ground to present a petition under s 181 of the Act. The first respondent relied on *Re A Company*. It is pertinent to note that Harman J, in dismissing the petition, was quick to point out that the pertinent question was whether the affairs of the company were conducted or were attributable to an act or omission on the part of the company and not from the acts of a shareholder carried out in a personal capacity *outside the course of a company's business* (Emphasis added.). By no stretch of the imagination can the statements in sub-paras 17.11 and 17.31 be considered as done outside the course of the company's business. The learned judge in *Re A Company* was of the view that a course of conduct by a shareholder which was damaging to the company, and which course of conduct, if called to the company's attention, the company would probably have been able to rectify — was conduct in the affairs of the company and oppressive. In congruence with the views of Harman J, it is my judgment that the conduct to be complained of must be in the affairs of the very company in respect of which the petition is presented. Applying this simple test, I find that the two impugned paragraphs refer to matters relating to the fourth respondent of which the first respondent is a shareholder and director.

The first respondent's reliance on *Re Bellador* is again incongruous. In that case, a petitioner who was one of the three directors and shareholders in a private company presented a petition under s 210 of the Companies Act 1948 (our s 181 of the Act), alleging oppressive conduct of the company's affairs by the other two directors and shareholders. However, during the cross-examination of the petitioner, it appeared that the real object of presenting the petition was to get repayment of a loan owed by the company to the petitioner's group of companies. Plowman J, in dismissing the petition, correctly held that the presentation of the petition in order to bring pressure to bear to achieve a collateral purpose was an abuse of the process of the court. I fail to see how this case could help the first respondent. Having considered all matters relating to the impugned two paragraphs, I am of the view that they ought not to be struck out.

A One final note on the contention of the first respondent that paras 17.11 and 17.34 ought to be struck out because their intention was to tarnish his name. In *Everett v Prythrgeh* [1841] 12 Sim 363, the court held that allegations of dishonesty and outrageous conduct are not scandalous if relevant to the issue. And in *Millington v Loring* (1880–81) 6 QBD 190, Brett LJ said at p 196:

B

> The mere fact that these matters state a scandalous fact does not make them scandalous ...

And in *Christie v Christie* (1872–1873) LR 8 Ch App 499, Lord Selborne LC said at p 503:

C

> The sole question in such a case is whether the matter alleged to be scandalous has a tendency, or, in other words, would be admissible in evidence to show the truth of any allegation in the bill that is material with reference to the relief that is prayed.

D *(b) The Claim Relating to the Seventh Respondent*

In this case, the first respondent argued that the seventh respondent in this petition was the seventh plaintiff in the D2 matter and that the reliefs sought in both cases were identical. The prayers sought in both cases have been reproduced earlier. It is most unfortunate that the first respondent had failed to specify with clarity the exact paragraph that the first respondent E required this court to strike out.

If a party wishes the court to do an act such as to strike out or expunge or amend any passage or paragraph in the pleadings before the court, then it is the duty of the party seeking the court's indulgence to so act to place before the court in clear, unambiguous terms the exact F requirement, namely whether to strike out or expunge or amend. Next, the exact words or passage or lines in the pleadings that are sought to be struck out or expunged or amended ought to be clearly spelt out. Any application that lacks such precision ought to be struck out for uncertainty. The court must not be put in a position to circumspect. Referring to the petition, G most of the paragraphs therein refer to the seventh respondent. Does it therefore mean that every paragraph that has a semblance of reference to the seventh respondent ought to be struck out? This cannot be. Obviously, a wide application is vague and ambiguous. However, only in its affidavit and in the counsel's submission did the first respondent refer to the impugned paragraphs as being paras (k) and (l). In *Williamson v London & H North Western Railway Co* (1879–80) 12 Ch D 787, Hall VC said at p 790:

> I feel a difficulty in applying your notice of motion. You have not in form asked to have the whole of this reply struck out, but to have particular parts of it struck out without specifying them. The striking out is something to be done by the court, and it must be specific.

I Again on this same aspect, Buckley J held in *Carl Zeiss Stiftung v Rayner & Keeler Ltd & Ors (No 3)* [1970] Ch 506 that where a party sought to strike out some part of his opponent's pleading, he had to indicate clearly exactly what it was he wanted struck out; if the allegation objected to was not in

express terms, it was not sufficient merely to ask that it be struck out 'in so far as it may contain' such an allegation. I am of the view that the duty of an applicant to strike out a paragraph or part thereof is to identify that which is sought to be struck out. It does not behove an applicant to be vague and ambiguous in his application as to the prayers he wants, and to rely on such prayers on matters averred to in his affidavit. An affidavit is to support the application, not vice versa. An affidavit can contain very many prayers. I could thus be opening the proverbial Pandora's box if I were to accept the first respondent's arguments that I ought to look for the prayers he wants not in his application, but in his supporting affidavit.

Such a dangerous precedent could be used with impunity by any applicant who, having failed to specify what exactly he is asking for, could rely on some statement or paragraph of his affidavit to infer any prayer that he wants. In the circumstances, since the application (encl 10) was vague and imprecise, I disallowed that limb of the application that related to the seventh respondent.

Having considered all aspects of this application and the submissions and the authorities submitted, I dismissed encl 10 with costs to follow the event.

Order accordingly.

Reported by Tey Tsun Hang